

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

Daniel J. McCarthy,	)	
	)	
Plaintiff,	)	<b>ORDER ADOPTING</b>
	)	<b>REPORT AND RECOMMENDATION</b>
vs.	)	
	)	
	)	
Michael J. Astrue, Social Security	)	Case No. 3:07-cv-92
Administration Commissioner,	)	
	)	
Defendant.	)	

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The plaintiff, Daniel J. McCarthy, filed a complaint on October 31, 2007, seeking judicial review of the Social Security Commissioner's denial of her application for disability insurance benefits under Title II of the Social Security Act, 42 U.S.C. §§ 401-433. See Docket No. 1. The parties filed their respective motions for summary judgment on May 30, 2008, and July 2, 2008. See Docket Nos. 6 and 10. Magistrate Judge Karen K. Klein conducted a review of the record and relevant case law and issued a Report and Recommendation on March 11, 2009. See Docket No. 16. Judge Klein recommended that the defendant's motion for summary judgment be denied and that McCarthy's motion for summary judgment be granted in part, and that the matter be remanded to the Commissioner for further proceedings. The parties were given ten (10) days to file an objection to the Report and Recommendation. No objections were filed.

The Court has carefully reviewed the Report and Recommendation, relevant case law, and the entire record, and finds the Report and Recommendation to be persuasive. The Court **ADOPTS** the Report and Recommendation (Docket No. 16) in its entirety. The Plaintiff's motion for summary judgment (Docket No. 6) is **GRANTED in part** and the Defendant's motion for summary judgment is **DENIED** (Docket No. 10). The matter is **REMANDED** to the Commissioner for

issuance of the requested subpoenas and order for an additional consultive medical exam, as well as rehearing before a different ALJ.

**IT IS SO ORDERED.**

Dated this day of 31st day of March, 2009.

/s/ Daniel L. Hovland

Daniel L. Hovland, Chief Judge  
United States District Court